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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 1060

R. P. DUCK,

Appellant,

vs.

ARKANSAS CORPORATION COMMISSION.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ARKANSAS.

MOTION TO DISMISS OR AFFIRM AND STATEMENT OPPOSING JURISDICTION.

JACK HOLT,
Attorney General of Arkansas.
EUGENE R. WARREN,
Counsel for Appellee.

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MOTION TO AFFIRM AND DISMISS.

(Filed in Arkansas Supreme Court, March 3, 1942.)

Appellee, respectfully praying permission of this Honorable Court, moves that the decision of the Supreme Court of the State of Arkansas be affirmed for the reason that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

In the alternative, Appellee prays that the appeal be dismissed for the reason that there are no grounds calling for the jurisdiction of this Honorable Court.

WHEREFORE, Appellee prays that said appeal be dismissed and the judgment of the Supreme Court of the State of Arkansas be affirmed.

JACK HOLT,
Attorney General.
EUGENE R. WARREN,
Attorney for Appellee.

STATEMENT AGAINST JURISDICTION.

(Filed in the Supreme Court of Arkansas March 3, 1942.)

Questions upon which the decision of this cause depends are unsubstantial in view of the prior decisions of this Honorable Court. The operation of a travel bureau within the State of Arkansas may be regulated or prohibited in the entirety under the police power of the state. This Court has held in *People of the State of California* v. *E. W. Thompson*, 313 U. S. 109, 85 L. Ed. 1219, that the business of operating a travel bureau or transportation bureau by transportation agents negotiating for the transportation of passengers over the public highways of the State is a business notoriously subject to fraud and abuse. "It is not shown to be other than what on its face it appears to be, a measure to safeguard the members of the public desiring to secure transportation by motor vehicle who are peculiarly unable to protect themselves from fraud and overreaching of those engaged in a business notoriously subject to those abuses." Further in determining the identical question presented here, the Court said: "Fraudulent or unconscionable conduct of those so engaged which is injurious to their patrons, is peculiarly a subject of local concern and the appropriate subject of local regulation. In every practical sense regulation of such conduct is beyond the effective reach of Congressional action. Unless some measure of local control is permissible, it must go largely unregulated.

In any case until Congress undertakes its regulation we can find no adequate basis for saying that the Constitution, interpreted as a working instrument of government, has foreclosed regulation, such as the present, by local authority."

This Court will not interfere with the action of a State Legislature in prohibiting a business or strictly regulating same in order to reach certain evils which cannot be reached otherwise in the opinion of the State Legislature; *Booth* v. *State of Illinois,* 184 U. S. 425, 46 L. Ed. 623; *J. L. Murphy* v. *People of the State of California,* 225 U. S. 621, 56 L. Ed. 1229. The issues presented in this cause are not distinguishable from the issues determined in the case of *Williams* v. *State of Arkansas,* 217 U. S. 87, 54 L. Ed. 674. The Legislature of the State of Arkansas and the Supreme Court of the State of Arkansas have determined that the operation of the business involved here is subject to prohibition as being essential to the protection of the danger which is found inherent in the operation of the business.

In the exercise of its police power, the State may forbid as inimical to the public welfare the prosecution of a particular type of business or regulate business in such a manner as to evade evils deemed to arise from its pursuit; *Great Atlantic and Pacific Tea Company* v. *Alice Lee Grosjean,* 301 U. S. 412, 81 L. Ed. 1193.

Respectfully submitted,

JACK HOLT,
Attorney General,
State of Arkansas.
EUGENE R. WARREN,
Counsel for Appellee.